



PATENT

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November 29, 2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 10/026,266
Filing Date: 12/21/2001
Applicant(s): Michael L. Fraenkel, et al.
Entitled: DELEGATION-BASED CLASS LOADING
OF CYCLICALLY DEPENDENT COMPONENTS
Examiner: Steelman, Mary J.
Group Art Unit: 2191
Attorney Docket No.: RSW920010208US1 (7161-024U)

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants request that a Panel Review of the rejections in the Final Office Action dated November 16, 2005, be performed in the above identified application.

REMARKS

**CLAIMS 1-20 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
SUSARIA IN VIEW OF BRACHA**

Applicants respectfully submit that one having ordinary skill in the art would not have arrived at the claimed invention since, even if the references were combined in the manner suggested by the Examiner, the combined teachings of Susaria and Bracha fail to teach or suggest all of the claimed limitations.

As apparent from the Examiner's comments in section (D) (pgs. 3-4 of Final Office Action), the Examiner appears to misunderstand the initial burden placed on the Examiner to establish a prima facie case of anticipation or obviousness. Only after the Examiner has established a prima facie case of anticipation or obviousness are Applicants required to amend the claims and/or point out the features not taught or suggested by the prior art. However, as argued throughout the Request for Reconsideration dated August 22, 2005, this initial burden has not been met.

For example, on pg. 4 of the Final Office, the Examiner wrote:

As an example, while Examiner points to an "hierarchical stack of class loaders" in rejecting the limitation "listing peer class loaders," Applicant fails to explain why these features should not be considered analogous.

The burden of claim interpretation rests with the Examiner. Furthermore, claim interpretation is requires more from the Examiner than simply a statement that "claimed feature A is disclosed by feature X in the applied prior art."

With regard to this particular feature, the Examiner has stated in both the 2nd and Final Office Action that "Susaria failed to specify a list of peer class loaders." However, the Examiner initially asserted that a hierarchical stack of class loaders has "a similar effect to 'listing peer class loaders'" (pg. 4, 2nd Office Action), and now the Examiner states that these features are "analogous" (§ spanning pgs. 5 and 6 of Final Office Action). The Examiner's analysis regarding feature is found in section (A) (pg. 2 of the Final Office Action), which states:

Examiner's Response: A hierarchical stack of class loaders is a list of parent and successive child loaders. Child loaders are 'peer class loaders.' A hierarchical arrangement reflects dependency. Examiner maintains the rejection.

The Examiner's analysis is confusing since on one hand, the Examiner is arguing that the feature is not disclosed by Susaria, whereas on the other hand, the Examiner is arguing that an analogous feature is disclosed by Susaria. Notwithstanding this ambiguity, the Examiner has not established that one having ordinary skill in the art would have reasonably interpreted the claimed phrase "a list of peer class loaders" so as to believe a "hierarchical stack of class loaders" discloses this list. Moreover, the claimed list is of peer class loaders, and the Examiner has failed to supply any factual support for the assertion that "Child loaders are 'peer class loaders.'" Furthermore, the Examiner has failed to explain the importance of the Examiner's assertion that "[a] hierarchical arrangement reflects dependency" in the Examiner's analysis since "dependency" is not related to the claimed "peer class loaders."

On pgs. 4 and 5 of the Request for Reconsideration, Applicants argued that the Examiner's has improperly relied upon the doctrine of inherency to teach a specific feature, and the Examiner's response to this argument is found in section (C) (pg. 2 of Final Office Action). This response by the Examiner, however, does not address any of the arguments presented by

Applicants. Instead, the Examiner simply states that "[t]he meaning known in the art is a 'dirty class monitor' indicates a change." Such a statement, however, fails to establish that Susaria inherently discloses the claimed "a flag indicating whether the class has been replaced."

The Examiner's response in section (D) (pg. 3 of Final Office Action) cited paragraph [0057] of Bracha and states that "[c]lass loaders in the hierarchy (peers) contain the logic to load specific classes, at which time the location, definition and loading occur." However, as argued in the ¶ spanning pages 5 and 6 of the Request for Reconsideration, this passage is silent to as to deferring the locating and defining of the class. Thus, the Examiner's response is simply a restatement of the original (lack of) analysis, without any explanation as to why the Examiner believes these features are disclosed by Bracha.

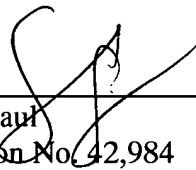
Applicants also note that the Examiner ignored the separate arguments presented in (1) the 1st full ¶ on pg. 3; (2) the 2nd full ¶ on pg. 3; (3) the ¶ spanning pgs. 3 and 4; and (4) the 1st full ¶ on pg. 6. In this regard, the reference is made to M.P.E.P. § 707.07(f), which states that "the Examiner, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."

Applicants, therefore, submit that the Examiner has failed to establish a prima facie case of obviousness since the Examiner has failed to establish that the applied prior art teaches or suggests all of the claimed limitations.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: November 28, 2005

Respectfully submitted,



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